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8 UNITED STATES BANKRUPTCY COURT  
9 EASTERN DISTRICT OF CALIFORNIA

10 IN RE:

11  
12 KSE, INC.,

13 Debtor.  
14  
15  
16

) NO: 11-28420-C-7

) DC No.: SLF-3

) MOTION FOR AUTHORIZATION TO  
SELL THE ESTATE'S INTEREST IN  
PROPERTY AT PUBLIC AUCTION

) Date: July 5, 2011

) Time: 9:30 a.m.

) Place: Department C

) The Honorable Christopher M. Klein

1 Chapter 7 Trustee Alan S. Fukushima respectfully moves for authorization to sell  
2 personal property of the estate at public auction. The Trustee believes the proposed sale of the  
3 personal property is in the best interests of the creditors and this Court should approve it  
4 pursuant to Bankruptcy Code Section 363(b).

5 The Trustee represents the following:

6 1. On April 4, 2011, the Debtor filed this case. Alan S. Fukushima was  
7 appointed Chapter 7 Trustee.

8 2. The Debtor scheduled "Construction Tools and Equipment" and valued it all  
9 at \$66,501.00.

10 3. Some of the tools and equipment have been delivered for auction to West  
11 Auctions, Inc. ("West"), at 450 Santa Anita Drive, Woodland, California 95776, including the  
12 following: Welders, welding accessories and supplies, drill press, Esab Silhouette 1000 CNC  
13 plasma table, grinders, sanders, pallet jack, forklift, metal stock, Scotchman ironworker, job  
14 boxes, roll bender, pallet straddle stacker, air filtration system, air hoses, towable welders,  
15 towable power generator, towable air compressor, circular floor fan, metal cart, ladders, metal  
16 rollers, scaffold, construction signs, horizontal bandsaw, power tools, shelving, and metal stock  
(the "Equipment"). (Fukushima Decl., ¶ 3).

17 4. The Debtor did not schedule any liens against the Equipment and the  
18 Trustee is unaware of any liens. (Fukushima Decl., ¶ 4).

19 **SALE OF THE EQUIPMENT AT PUBLIC AUCTION**

20 5. The Trustee believes, based on his knowledge and on West's evaluation of  
21 the Equipment, that there is equity in the Equipment and a sale of the Equipment at public  
22 auction is the best method of liquidating it for the benefit of the estate. (Fukushima Decl., ¶ 5).

23 6. The Trustee is filing concurrently an application to employ West as  
24 auctioneer, which is also set for hearing on June 21, 2011. (Fukushima Decl., ¶ 6).

25 7. The Trustee believes that by using an auction process, the Equipment will  
26 be exposed to a large number of prospective purchasers and, for that reason, will likely be sold

1 for the best possible price. West engages in extensive advertising, including internet  
2 advertisements, syndication of auction announcements through network partners associated  
3 with the National Auctioneer's Association and California State Auctioneer's Association, and it  
4 emails auction announcements to its subscriber list of approximately 10,000 people.  
5 (Fukushima Decl., ¶ 7).

6 8. If the Court approves this Motion, the Trustee intends to sell the Equipment  
7 at an online auction to be conducted at West's website, www.westauction.com. The Equipment  
8 will be sold on an "AS IS" basis without any warranty. Interested persons may inspect the  
9 Equipment on weekdays between 9:00 a.m. and 4:00 p.m. by appointment with West.  
10 Information regarding the sale or subsequent sale dates, if any, may be obtained by telephoning  
11 West, at (530) 661-0490. (Fukushima Decl., ¶ 8).

12 9. The Trustee intends to accept the highest reasonable bid. If, in the  
13 exercise of the Trustee's business judgment, no reasonable bid is received, the Equipment may  
14 be held for subsequent auction or private sale without additional notice. (Fukushima Decl., ¶ 9).

15 10. The Trustee believes the sale of the Equipment at a public auction is in the  
16 best interests of the creditors because it is likely to obtain the best possible price and should be  
17 approved by the Court under Bankruptcy Code Section 363. (Fukushima Decl., ¶ 10).

#### **AUCTIONEER COMPENSATION**

18 11. As is noted in the application to employ West, the Trustee requests  
19 authorization to pay West a commission of 10 percent of the sales price of the Equipment sold  
20 at auction plus reimbursement of reasonable expenses up to \$250.00, incurred in preparing the  
21 Equipment for sale, including out of pocket expenses for transportation and storage of the  
22 Equipment. Also, each successful buyer will pay a buyer's fee of 13 percent if they pay with a  
23 credit card, or 10 percent if they pay cash, directly to West to reimburse West for advertising  
24 and other costs. The Trustee believes that this is a customary practice for the auction sale of  
25 personal property and one which encourages the use of auction professionals to assist with  
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1 bankruptcy sales of property. The Trustee will file a report of the sale with the Court. (Fukushima  
2 Decl., ¶ 11).

3 **CONCLUSION**

4 The Trustee respectfully requests that the Court authorize the sale of the  
5 Equipment at public auction on the terms and conditions set forth in this Motion, approve the  
6 compensation of the auctioneer on the terms and conditions set forth in this Motion (10 percent  
7 seller's commission, reimbursement of reasonable expenses up to \$250.00, and 13 percent  
8 buyer's fee from each buyer if they pay with a credit card, or 10 percent if they pay cash), and  
9 that it grant such other and further relief as is appropriate.

10 Dated: June 2, 2011

THE SUNTAG LAW FIRM  
A Professional Corporation

11 By: /s/ Dana A. Suntag  
12 DANA A. SUNTAG  
13 Attorneys for Chapter 7 Trustee  
14 ALAN S. FUKUSHIMA  
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